

HOUSE BILL 3798  
By Swafford

AN ACT to amend Tennessee Code Annotated, Title 39,  
Chapter 17, Part 9, relative to obscenity and  
unlawful sexual devices.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 17, Part 9, is amended by  
adding the following new section:

§39-17-921.

(a) A person commits the offense of distributing unlawful sexual devices when the person knowingly sells, advertises, publishes or exhibits to another person any three-dimensional device designed or marketed as useful primarily for the stimulation of human genital organs, or offers to do so, or possesses such devices with the intent to do so.

(b) A person commits the offense of wholesale distributing unlawful sexual devices when the person distributes for the purpose of resale any three-dimensional device designed or marketed as useful primarily for the stimulation of human genital organs, or offers to do so, or possesses such devices with the intent to do so.

(c) This section shall not apply when the distribution or wholesale distribution of the device was made by:

(1) A person, corporation, company, partnership, firm, association, business, establishment or other legal entity to a person associated with an institution of higher learning, either as a member of the faculty or as a matriculated student, teaching or pursuing a course of study related to such device;

(2) A licensed physician or a licensed psychologist to a person whose receipt of such device was authorized in writing by such physician or psychologist in the course of medical or psychological treatment or care; or

(3) A person who while acting in his capacity as an employee is employed on a full-time or part-time basis by:

(A) Any recognized historical society or museum accorded charitable status by the federal government;

(B) Any state, county or municipal public library; or

(C) Any library of any public or private school, college or university in this state.

(d) Any exemption from prosecution claimed under the provisions of this section may be raised at a pretrial hearing by motion, and the court shall determine whether sufficient evidence exists to constitute an exemption from prosecution under the provisions of this section. If the motion is sustained, the case shall be dismissed; provided, however, if the motion is not sustained, then the defendant may offer into evidence at trial as an affirmative defense to conviction under this section any matter which could have been raised by the defendant in the motion to dismiss.

(e)

(1) Any person, except one who wholesale distributes, who violates this section commits a Class A misdemeanor and, upon conviction, shall, in the case of the first offense, be fined not more than five thousand dollars (\$5,000) or imprisoned in the county jail for a term not to exceed six (6) months, or both. If the person has been previously convicted of a violation of this section, then the person shall be fined not less than two thousand five hundred dollars (\$2,500)

nor more than ten thousand dollars (\$10,000) or imprisoned for a term not to exceed the maximum punishment for a Class A misdemeanor.

(2) Any person who wholesale distributes in violation of this section commits a Class A misdemeanor and shall, upon conviction, be fined not more than ten thousand dollars (\$10,000) or imprisoned for a term not to exceed eleven (11) months twenty-nine (29) days, or both. If the person has been previously convicted of a violation of this section, then the person shall, upon conviction, be fined not less than two thousand five hundred dollars (\$2,500) nor more than fifty thousand dollars (\$50,000) or imprisoned for a term not to exceed eleven (11) months twenty-nine (29) days, or both.

(3) A corporation, company, partnership, firm, association, business, establishment, organization or other legal entity other than an individual convicted of distributing unlawful sexual devices or wholesale distribution of unlawful sexual devices shall be fined not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000). If such legal entity has been previously convicted of distributing unlawful sexual devices or wholesale distribution of unlawful sexual devices, then such legal entity shall be fined not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

SECTION 2. This act shall take effect July 1, 2006, the public welfare requiring it.